



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

APR 16 2007

Rebecca H. Gordon, Esq.
Ezra W. Reese, Esq.
Perkins Coie LLP
607 14th Street, NW
Washington, DC 20005

RE: MUR 5789
Bill Nelson for U.S. Senate and Peggy
Gagnon, in her official capacity as treasurer

Dear Ms. Gordon and Mr. Reese:

On October 25, 2006, the Federal Election Commission notified your client, Bill Nelson for U.S. Senate and Peggy Gagnon, in her official capacity as treasurer ("Nelson Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On April 3, 2007, the Commission found, on the basis of the information in the complaint, your response, and other information, that there is no reason to believe that the Nelson Committee violated 2 U.S.C. § 441b by knowingly accepting prohibited contributions. Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Julie McConnell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Thomasenia P. Duncan
Acting General Counsel

A handwritten signature in black ink, appearing to read "Rhonda J. Vosdingh".

BY: Rhonda J. Vosdingh
Associate General Counsel for Enforcement

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Enclosure
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

MUR 5789

Respondents: Bill Nelson for U.S. Senate and Peggy Gagnon, in her official capacity
as treasurer

I. INTRODUCTION

The complaint alleges that Bill Nelson for U.S. Senate violated the Federal Election Campaign Act of 1971, as amended ("the Act"), in connection with fundraisers held by Bacardi USA, Inc. ("Bacardi"). Specifically, the complaint alleges that Bacardi facilitated the making of contributions by using a list of corporate vendors to distribute invitations to the Nelson fundraiser and that, as a result, Bill Nelson for U.S. Senate knowingly accepted prohibited corporate contributions. *See* 2 U.S.C. § 441b; 11 C.F.R. § 114.2(d), (f). For the reasons discussed below, the Commission finds no reason to believe that Bill Nelson for U.S. Senate and Peggy Gagnon, in her official capacity as treasurer, violated the Act by knowingly accepting prohibited corporate contributions.

II. FACTUAL AND LEGAL ANALYSIS

On September 30, 2005, Bacardi PAC held a fundraiser for Bill Nelson for U.S. Senate. *See* Amended Compl. at ¶ 11. The complaint asserts that Bacardi used a corporate list of vendors, including a law firm and a lobbying firm, to distribute invitations to the fundraiser and solicit contributions from employees of those vendors, resulting in at least \$6,550 in facilitated contributions to Bill Nelson for U.S. Senate. *See id.* at ¶ 13.

Corporations are prohibited from using corporate resources or facilities to engage in fundraising activities in connection with any federal election beyond certain limited exemptions set forth in the Commission's regulations. *See* 2 U.S.C. § 441b; 11 C.F.R. § 114.2(f). For

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1 example, a corporation may not provide catering or other food services in connection with
2 fundraising activities or use a corporate list of customers, clients, vendors or others outside the
3 restricted class to solicit contributions or distribute invitations to a fundraiser, unless it obtains
4 advance payment for the fair market value of the services or list. *See* 11 C.F.R.
5 § 114.2(f)(2)(i)(C), (E). By contrast, a corporation's separate segregated fund may make
6 contributions and expenditures in connection with federal elections subject to the Act's limits
7 and disclosure requirements. *See* AO 1997-16 (ONRC Action) at 6. In addition, stockholders
8 and employees of a corporation may make occasional, isolated or incidental use of corporate
9 facilities for individual volunteer activity in connection with federal elections and are not
10 required to reimburse the corporation unless their activities increase overhead or operating costs.
11 *See* 11 C.F.R. § 114.9(a).

12 Bacardi denies that it used a list of corporate vendors for the Nelson fundraising event.
13 In an affidavit, Frederick J. Wilson III, the Senior Vice President and General Counsel, states
14 that the company does not maintain a list of corporate vendors and that two employees acting as
15 volunteers organized the fundraising events and invited personal and business contacts to the
16 fundraiser. *See* Bacardi Resp. to Amended Compl. at 2; *see also* Wilson Aff. at ¶ 5. Although
17 the response does not identify the volunteers, include affidavits from them, or provide additional
18 information concerning the scope of their fundraising activities, it appears sufficient to refute the
19 allegations that Bacardi facilitated contributions by using a list of corporate vendors for the
20 fundraiser because the complaint was conclusory and offered no information supporting this
21 speculative allegation.⁵

⁵ In addition, because the complaint does not allege that Bacardi expected, ordered, or coerced its employees to plan the fundraiser, and the available information does not suggest that this was the case, there is no reasonable basis to investigate whether Bacardi engaged in corporate facilitation in this manner or through other means. *See* 11 C.F.R. §§ 114.2(f), 114.9(a)

1 Accordingly, the Commission finds no reason to believe that Bill Nelson for U.S. Senate
2 and Peggy Gagnon, in her official capacity as treasurer, violated 2 U.S.C. § 441b by knowingly
3 accepting prohibited contributions in connection with this fundraiser.

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